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Reports

TARA SINGH v. CHAIRMAN, SAILORS' INSTITUTE COMMITTEE, SINGAPORE

[A.C.J. (Whyatt C.J.) April 25, 1958]

[Singapore — District Court Appeal No. 32 of 1957]

Master and Servant — Hours of work — "Wages" — Meaning of — Labour Ordinance, 1955, s.43(7) — Limitation Ordinance (Cap.7), Schedule Pt. I, Art. 2.

The appellant, a swimming pool mechanic attendant, employed by the respondent in that capacity, on August 6, 1957 submitted a claim to the Asst. Commissioner for Labour for Sunday pay, statutory holidays pay, and overtime pay, covering a period of 20 months from December 1, 1955 to July 31, 1957. The Asst. Commissioner allowed the claim at ordinary rates of pay for Sunday and statutory holidays but disallowed the claim for overtime pay, and held that the Limitation Ordinance applied to the claim for Sunday and statutory holidays pay so that the amount awarded to the appellant was limited to the period of 12 months immediately preceding the date of the submission of his claim.

The question whether the appellant was entitled to be paid overtime depended upon whether he was excluded from the statutory provisions which entitle a workman to overtime by reason of section 43(7) of the Labour Ordinance which reads: "The provisions of this section shall not apply to workmen engaged.....in work which by its nature involves long and regular hours of inactive or stand-by employment."

Held: (1) the evidence in this case showed that the appellant's work involved long and regular hours of inactive employment, therefore he was not entitled to the benefit of overtime provisions contained in section 43 of the Labour Ordinance;

(2) the Labour Ordinance states clearly that a workman who works on Sundays and statutory holidays shall be entitled to double his ordinary rate of pay, therefore the appellant was entitled to this claim;

(3) the difference between wages, on the one hand, and Sunday and statutory holiday pay, on the other, is the difference between debt payable under a contract and a debt recoverable by virtue of a statute; the former is a simple contract debt and therefore it would be wrong to construe the word "wages" in Art. 2 of Schedule to the Limitation Ordinance as if no such difference existed. In this case the appellant's claim for Sunday and statutory holiday pay did not come within the Art. 2 of the Schedule.

Cases referred to:—

(1) *Picken v. Lord Balfour of Burleigh*, (1945) 1 Ch. 90.

(2) *Mohamed Akbar Khan v. Attar Singh*, A.I.R. 1936 P.C. 171; I.L.R. 17 Lah. 557, 564; 63 I.A. 279.

DISTRICT COURT APPEAL.

K. K. Bezboruah for the appellant.

A. P. Godwin for the respondent.

Cur. Adv. Vult.

Whyatt C.J.: — On the 6th August, 1957 a workman, named Tara Singh, who is employed as a swimming pool mechanic attendant by the Chairman of the Sailors' Institute Committee, submitted a claim to the Assistant Commissioner for Labour for Sunday pay, statutory holidays pay, and overtime pay, covering a period of twenty months from the 1st December, 1955 to the 31st July, 1957. The Assistant Commissioner allowed the claim at ordinary rates of pay for Sunday and statutory holidays but disallowed the claim for overtime pay. He held, however, that the Limitation Ordinance applied to the claim for Sunday and statutory holidays pay so that the amount awarded to the workman was limited to the period of twelve months immediately preceding the date of the submission of his claim.

The first ground of appeal is that the Assistant Commissioner was wrong in not awarding double pay for Sundays and statutory holidays. The Labour Ordinance states clearly that a workman who works on these days shall be entitled to double his ordinary rate of pay and therefore this ground of appeal succeeds.

The question whether the appellant is entitled to be paid overtime depends upon whether he is excluded from the statutory provisions which entitle a workman to overtime by reason of sub-section (7) of section 43 of the Ordinance, which reads as follows:

"The provisions of this section shall not apply to workmen engaged.....in work which by its nature involves long and regular hours of inactive or stand-by employment."

The evidence given before the Assistant Commissioner as to the nature of the appellant's work was somewhat conflicting. The appellant himself said that he came on duty at the swimming pool at 7.00 a.m. and finished at 7.00 p.m. His duties were to look after the pumping

machine and to effect minor repairs to it when necessary, and in addition he had general duties which involved attending to the cleanliness of the pool. He admitted, however, in cross-examination, that he remained inactive for most part of the day. The respondent called as his witnesses, a cleaner and a ticket seller who are employed along with the appellant at this pool. The cleaner said that the appellant worked with him, scrubbing the pool until 9.00 a.m., and then the appellant dressed and went out of the pool. The ticket collector confirmed the cleaner's evidence that after the appellant had finished helping to clean the pool, he dressed and went out at 9.00 a.m. He added that if the appellant came in again he went to the engine room and sat there doing nothing, and added that "from 9.00 a.m. to 6.00 p.m. he did what he liked." It was for the Assistant Labour Commissioner to decide on that evidence whether the nature of the appellant's work involved long and regular hours of inactive or stand-by employment, and his conclusion was that "the employment involved long and regular hours of stand-by duties." There was some argument at the hearing of this appeal as to the meaning of stand-by duties but I do not find it necessary to examine this point at length as I am satisfied there was ample evidence to justify a finding that the appellant's work involved long and regular hours of inactive employment and that is sufficient to bring him within the terms of sub-section (7) of section 43 and so exclude him from the benefit of the overtime provisions contained in the other sub-sections of that section. The appeal on the question of overtime, therefore, fails.

I now turn to consider the last ground of appeal, namely, whether the Limitation Ordinance applies to an inquiry into and decision by the Labour Commissioner (or an Assistant Labour Commissioner) under section 149 of the Labour Ordinance in a dispute between a workman and his employer concerning wages. The Limitation Ordinance provides that every suit instituted after the period of limitation prescribed therefor by the Schedule to the Ordinance shall be dismissed if limitation is set up as a defence, and it follows that if the respondent is right in his contention that the Limitation Ordinance applies to these proceedings before the Assistant Labour Commissioner, he will be able to resist the appellant's claim to be paid for the work which he performed on the Sundays and statutory holidays which occurred during the period of eight months from the 1st December, 1955 to the 6th August, 1956.

The arguments advanced by counsel on behalf of the appellant were formulated under two heads: first, it was contended that the inquiry and decision of the Assistant Labour Commissioner under section 149 of the Labour Ordinance was not an action or other proceeding within the meaning of the Limitation Ordinance and therefore the Limitation Ordinance has no application to this case; and secondly, it was contended that the provisions of Part 1 (Item 2) of the Schedule to the Ordinance which fix the limitation period at twelve months for suits for wages do not apply to a suit for Sunday and statutory holiday pay as such pay is not wages but a statutory debt recoverable by virtue of the Labour Ordinance.

The second argument falls within a narrow compass and it will be convenient to deal with it first. The expression "wages," in its ordinary meaning, connotes the remuneration payable by an employer to a workman under a contract of service and, in fact, the statutory definition of wages in the Labour Ordinance defines wages in this sense. But it may happen, indeed it frequently does happen, under modern legislation, that an employer is required to make additional payments to those whom he employs. These additional payments, unlike wages, are not consensual in their origin; on the contrary they are compulsory, being imposed by statute. Examples of such compulsory payments are the Sunday pay and statutory holidays pay for which provision is made in the Labour Ordinance. It is interesting to observe that the distinction between wages and Sunday extra pay is recognised in the decision of Eversheed J. in *Picken v. Lord Balfour of Burleigh.*[1] In that case Eversheed J. had to consider whether wages included war bonus, war wages, overtime and Sunday extra pay and decided that it included the first two items but did not include overtime and Sunday extra pay. The reasons for his decision do not appear from the report, which is very brief, but it is significant that although various other points were considered on appeal, there was no appeal on this point. In the present case the difference between wages, on the one hand, and Sunday and statutory holidays pay, on the other, is the difference between a debt payable under a contract and a debt recoverable by virtue of a statute; the former is a simple contract debt, whereas the latter is a specialty debt.

It is clear, therefore, that there are differences of importance between wages and Sunday and statutory holidays pay and it would, in my

opinion, be wrong to construe the word "wages" in Part 1 (Item 2) of the Schedule to the Limitation Ordinance as if no such differences existed. Moreover, it is to be remembered that a Statute of Limitation should be construed strictly. As the learned editors of *Maxwell on Interpretation of Statutes* state at p. 287 of the 10th edition: "The defence of lapse of time against a just demand is not to be extended to cases which are not clearly within the enactment....." In my view, it cannot be said that the appellant's claim for Sunday pay and statutory holiday pay is clearly within the words of Part 1 (Item 2) of the Schedule to the Limitation Ordinance and therefore I hold that these provisions do not apply to this claim.

This being my view as to the proper construction of the relevant provisions of the Schedule, it is not necessary for me to consider whether an inquiry and decision by the Labour Commissioner into a dispute as to wages under section 149 is a suit within the meaning of section 3 of the Limitation Ordinance, and since any observations on this point would therefore be *obiter*, it seems to me undesirable to comment upon it.

For these reasons, I am of the opinion the decision of the Assistant Labour Commissioner that the appellant's claim for Sunday and statutory holiday pay was barred by the Limitation Ordinance was wrong. In this connection it is not inappropriate to recall the words of Lord Atkin in *Mohamed Akbar Khan v. Attar Singh.*[2] "The defence," he said, "therefore had to rest upon the Limitation Act, a defence meritorious enough where the defendant has been left in long enjoyment of property, or where from lapse of time the original existence or the discharge of an obligation is left in doubt, but void of all merit where, as here, an original obligation is admitted and a fictitious discharge is falsely alleged." In my opinion the respondent's defence in this case, insofar as it was based upon the Limitation Ordinance, was devoid of merit and it is satisfactory that it has not succeeded. The parties should endeavour to agree the amount which under this judgment becomes payable to the appellant but if they are unable to agree, the matter should be referred to the learned Registrar for inquiry and decision.

Order accordingly.

Solicitors: *K. K. Bezboruah; Donaldson & Burkinshaw.*

SV. P. SIVAGAMI ACHI & ANOR. v. SOHAN SINGH

[O.C.J. (Good J.) April 14, 1958]

[Ipoh — Originating Summons No. 97 of 1957]

Practice and Procedure — "Suit" — Meaning of — Whether Originating Summons is a "suit" — Civil Procedure Code (Cap.7), ss.41, 362 and Chapter 26 — Procedure when asking Court to exercise discretion.

The word "suit" as used in Chapter 26 of the Civil Procedure Code is not limited to what is usually called a "suit" presented by a plaint but includes all civil proceedings such as proceedings by Originating Summons.

Where an applicant is asking the Court to exercise a discretion in his favour, which discretion depends upon the Court being satisfied of the existence of sufficient grounds for something or other, there should be an affidavit setting out the grounds upon which the applicant relies in asking for the exercise of the discretion.

Cases referred to:—

(1) *Bhoopendro Narain v. Baroda Prasad,* I.L.R. 18 Cal. 500.
(2) *Venkata v. Venkatarama,* I.L.R. 22 Mad. 256.
(3) *In re Holloway,* (1894) 2 Q.B. 163, 166.
(4) *In re Fawsitt,* (1885) 30 Ch.D. 231, 233.
(5) *Nathumi Ram v. Musammat Sheo Kuar,* 3 Pat.L.J. 460.
(6) *Doma v. Dayaram,* 48 I.C. 1005.

APPLICATION by way of Summons in Chambers.

H. T. Ong for the applicants.

N. Sharma for the respondent.

Cur. Adv. Vult.

Good J.: — This is an application by way of Summons in Chambers for an order that the applicants may be at liberty to withdraw the proceedings herein (*i.e.* Originating Summons No. 97 of 1957) and to institute fresh proceedings.

The matter is governed by section 362 of the Civil Procedure Code and the question at once arises, and was very properly raised by Counsel for the applicants, whether an originating summons is a "suit" for the purposes of the section. The question is a difficult one since "suit" is not defined in our Civil Procedure Code. In the old Straits Settlements Civil Procedure Code (Cap. 102 in the 1926 Edition) "suit" was defined and was declared to be synonymous with "cause" and "action" and the learned commentator R. G. van Someren in his commentary on the definition put the question whether originating summonses were within it, and pointed out that section 73 would seem to show